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and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States parties due in 1996

Addendum

BELARUS*

[Original: Russian]
[29 September 1999]

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* For the initial and second periodic reports of Belarus, see CAT/C/5/Add.14 and CAT/C/17/Add.16; for their consideration, see CAT/C/SR.32, 33, 132, 133 and 134/Add.1 and Official Records of the General Assembly, Forty-fifth session, Supplement No. 44 (A/45/44), paras. 197-217 and ibid, Forty-eighth session (A/48/44), paras. 230-260.

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1. The third periodic report of the Republic of Belarus covers the period from September 1992 to April 1999 and contains information on changes in national legislation and its application in relation to fulfilment by Belarus of its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. There is no definition of the concept of "torture" in the national legislation of the Republic of Belarus. However, under article 15 of the Act on International Treaties of 8 July 1998, the generally recognized principles of international law and standards set out in international treaties to which Belarus is party and which have entered into force form part of the law applicable in the territory of the Republic of Belarus. Hence, application of the Convention draws on the concept as described in article 1 of the Convention.

3. Article 25 of the 1994 Constitution of the Republic of Belarus, with amendments and additions as adopted in the national referendum of 24 November 1996, provides that no person shall be subjected to torture or cruel, inhuman or degrading treatment or punishment, or be subjected to medical or other experiments without his or her consent. Since the Constitution is the supreme juridical authority in accordance with which all acts, decrees, edicts and other legislation are issued, this provision is the most effective legislative measure guaranteeing the prevention of acts of torture in Belarus. The constitutional provision remains in force in all extraordinary circumstances (state or threat of war, internal political instability or any other emergency), as personal freedom may be limited or removed by the State only in circumstances and in accordance with procedures established in law.

4. Between September 1992 and February 1999, appropriate amendments and additions were made to the Criminal Code, the Code of Criminal Procedure and the Corrective Labour Code, amongst other national legislation, in order to bring them into line with the Convention.

5. The Criminal Code of the Republic of Belarus establishes criminal responsibility for the following crimes, which, in the light of article 1 of the Convention, can be considered to constitute torture:

(a) Article 167: exceeding of powers or official authority. Part 2 establishes criminal responsibility for such acts when they are accompanied by violence, the use of weapons or cruel or degrading treatment and are committed by a person in a position of responsibility (text as amended by the Act of 15 June 1993). The number of people sentenced under article 167, part 2, of the Criminal Code in the years covered by this report was 26, 27, 33, 38, 47 and 58 respectively. Most were charged with exceeding their authority and using unlawful methods in investigation and inquiry;

(b) Article 166-1: failure to act by a person in a position of authority, in other words deliberate failure on the part of an official to take measures or the taking of inappropriate measures where they could and should have been taken by virtue of the law or the official's powers, where this caused serious injury or substantial damage to the rights and lawful interests of citizens or was associated with failure to prevent a crime (text as amended by the Act of 26 June 1996);

(c) Article 172: fabricating charges against a person known to be innocent. Part 2 makes it a criminal offence to cause such a person to be charged with particularly serious State or other grave crimes or artificially to create evidence of guilt;

(d) Article 175: forcing a person to testify. Part 2 makes it a criminal offence to do so by means of violence against or bullying of a person being questioned.

6. In accordance with article 4 of the Convention, the Criminal Code classifies the above acts as criminal offences, and in article 7-1 classifies the acts listed in article 167, part 2, article 172, part 2, and article 175, part 2, as grave crimes (text as amended by the Act of 1 March 1994).

7. In connection with the provisions of article 3 of the Convention, it should be noted that article 33 of the Immigration Act of 29 December 1998 provides that foreign citizens in respect of whom a deportation decision has been taken shall be deported to the country of their citizenship or the country from which they arrived in Belarus. However, where an alien is at risk of persecution unconnected with criminal proceedings against him in the country from which he or she arrived in Belarus, or there is a risk that he or she may be deported from that country to another country where he or she may be at risk of such persecution, a decision may be taken to deport him or her to a third country which has expressed willingness to accept him or her.

8. Article 15 of the Refugees Act of 22 February 1995 guarantees that refugees may not be returned against their will to a country which they left on the grounds envisaged in article 1 of the Act, i.e. as a result of a fully justified fear of persecution on the grounds of race, religion, citizenship or ethnicity. Under the Statute on Registering Applications from Aliens for Recognition as Refugees and the Procedure for Obtaining Refugee Status, confirmed by resolution of the Ministry of Labour of the Republic of Belarus of 26 May 1995, the oblast and Minsk city migration services consider the grounds for such fears, examine the purposes and motives for the aliens' arrival in Belarus and verify the evidence of persecution furnished.

9. Concerning the State's jurisdiction over the crimes listed in the Convention against Torture, it should be stated that the Criminal Code is the only criminal law in force in Belarus. All persons committing crimes within Belarus are liable to prosecution under the Criminal Code.

10. Citizens of Belarus who commit crimes abroad are liable to prosecution under the Criminal Code if they are charged or handed over to a court in Belarus. Stateless persons in Belarus who have committed crimes abroad are liable in the same way. If the above persons have been punished for their crimes abroad, the court may reduce their sentence or release them from the requirement to serve it, as appropriate. Foreign citizens are liable to prosecution under the Belarusian criminal legislation for crimes committed abroad in the instances provided for in international treaties (articles 2, 3 and 4 of the Criminal Code, as amended by the Act of 1 March 1994).

11. To date there is no special legislation in Belarus to govern the legal basis for extradition. However, the State administration is considering drafting an extradition bill. The legal basis for extradition is governed by the international treaties concluded by Belarus and a number of multilateral international treaties such as the Minsk Convention of 22 January 1993 on the

provision of judicial assistance and legal relations in civil, family and criminal cases and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The provisions of the Convention against Torture also govern some issues in this field, which, under the Act on International Treaties to which Belarus is party, should be regarded as part of Belarusian law on the issue.

12. In compliance with articles 5 and 6 of the Convention, the Code of Criminal Procedure contains various provisions on persons under investigation, the use of preventive measures and jurisdiction:

- Article 123, part 3, makes pre-trial investigation obligatory in cases involving crimes listed in articles 166-1, 167, 172 and 175 of the Criminal Code; it is to be carried out by investigators from the procurator's office (text as amended by the Act of 1 March 1994);

- Article 91 provides for a preventive measure in the form of remand in custody for all the crimes listed above; this measure may be applied in the case of people charged under article 172, part 2, and article 175 of the Criminal Code on the sole grounds that there is a risk of the commission of such a crime (text as amended by the Act of 3 March 1994);

- Under article 32, the crimes listed in Criminal Code articles 172 and 175 come under the jurisdiction of the oblast and Minsk city courts (text as amended by the Act of 1 March 1994);

- Under article 31, the crimes listed in Criminal Code articles 166-1 and 167 come under the jurisdiction of the district (city) court (text as amended by the Act of 1 February 1999);

- Under article 31-1, cases involving crimes listed in Criminal Code articles 166-1, 167, part 1, 172, part 1, and 175, part 1, may be heard by a single judge; cases involving crimes listed in articles 167, part 2, 172, part 2, and 175, part 2, may be heard by a single judge on condition that the accused pleads guilty during the initial investigation and agrees to the hearing of the case by a single judge (text as amended by the Act of 1 February 1999).

13. The legislation, including the amendments and additions to the Criminal Code and certain other legislative acts (text as amended by the Act of 1 March 1994), lays down that it is not the purpose of punishment to cause physical suffering or degradation (article 20 of the Criminal Code and article 1 of the Corrective Labour Code).

14. Article 111 of the Criminal Code establishes criminal responsibility for systematic beating or other acts of torture if they did not entail the consequences listed in articles 106 and 107. Such acts are punishable by imprisonment for up to three years. The same punishment is laid down for unlawful imprisonment carried out in such a way as to endanger the victim's life or health or accompanied by the infliction of physical suffering (article 124 of the Criminal Code).

15. In accordance with articles 11 and 15 of the Convention, article 15, part 3, of the Code of Criminal Procedure prohibits obtaining evidence from accused persons and others involved in the case by means of violence, threats or other unlawful means (text as amended by the Act of 11 June 1993). Reproduced below are the Criminal Code provisions on the criminal responsibility of State officials for the crimes listed in the Convention against Torture:

- Article 167 (exceeding of power or official authority): exceeding of power or official authority, i.e. the deliberate commission by an official of acts clearly in excess of the rights and authority conferred on him or her by the law and causing substantial damage or grave harm to the rights and lawful interests of citizens or to State or public interests, is punishable by up to three years' imprisonment or up to two years' corrective labour, or dismissal from office;

- Exceeding of power or official authority involving violence, the use of weapons, the causing of suffering or degrading treatment of the victim, committed by a person in a position of responsibility, is punishable by imprisonment for three to seven years and loss of the right to occupy certain positions.

16. It should be noted that article 15 of the Code of Criminal Procedure stipulates that the court or judge, the procurator, the investigator and the person conducting the inquiry are obliged to take all measures specified under the law to ensure that all circumstances of cases involving the crimes listed in the Convention are thoroughly, fully and objectively investigated and to identify circumstances supporting the charge or supporting the defence as well as mitigating and aggravating circumstances.

17. Article 15, part 3, contains a direct prohibition on the extraction of testimony from the accused and other persons involved in the case by means of violence, threats or other unlawful means (text as amended by the Acts of 11 June 1993 and 1 February 1999).

18. Article 27 of the Constitution contains the provision that evidence obtained in violation of the law shall have no legal force. This applies equally to evidence used in any judicial proceedings which was obtained under duress or by means of threats or other unlawful acts by the person conducting the inquiry or pre-trial investigation, criminal responsibility for which is established by article 175 of the Criminal Code. Part 2 of that article lays down that such acts, when accompanied by violence or bullying, are punishable by 3 to 10 years' imprisonment. According to the available data, one person was found guilty under that article between 1992 and 1998 (in 1997).

19. Article 18 of the Code of Criminal Procedure provides that the correct and uniform application of the laws of the Republic of Belarus in criminal proceedings shall be monitored by the Procurator-General of the Republic of Belarus and the procurators reporting to him, who are required promptly to take the measures envisaged by law to eliminate all violations of the law by any party (text as amended by the Act of 1 February 1999).

20. Article 10 of the Corrective Labour Code requires that the laws be observed strictly in the execution of penalties (text as amended by the Act of 1 March 1994). Article 11 of the Corrective Labour Code requires the Procurator's office to supervise the execution of penalties (text as amended by the Act of 1 March 1994).

21. In compliance with article 12 of the Convention, article 15, part 1, of the Code of Criminal Procedure lays down that the court or judge, the procurator, the investigator and the person conducting the inquiry must take all measures specified under the law to ensure that the circumstances of the case are investigated thoroughly, fully and objectively (text as amended by the Act of 1 February 1999).

22. Article 108 of the Code of Criminal Procedure provides that the procurator, the investigator, the authority conducting the inquiry and the judge must receive statements and reports of any crimes committed or being prepared, verify them and reach a decision (text as amended by the Act of 31 December 1997).

23. Articles 218, 219 and 220 of the Code of Criminal Procedure govern the procedure for lodging complaints against the authority in charge of the inquiry and the investigator, the examination of complaints by the procurator and the lodging of complaints against the actions and decisions of the procurator. The procurator must reach a decision on complaints within three days.

24. To give effect to article 13 of the Convention, the Act of 17 May 1995 added articles 60-2 to 60-12 to the Code of Criminal Procedure, governing the procedure for the adoption of measures to protect participants in a trial where there is sufficient evidence to suggest that the victim or witnesses or members of their families are in real danger of being killed or attacked or having their property destroyed or damaged or other unlawful acts committed against them.

25. Measures to protect witnesses, victims or experts from actions preventing them from appearing before a court or a body responsible for preliminary investigation or inquiry or forcing them to refuse to testify or to give false testimony or evidence are contained in article 179 of the Criminal Code, which provides that committing such actions by means of a threat of murder, violence or destruction of the property of those persons or their families, publicizing information which they wish to keep secret, bribing a witness, victim or expert for the same purposes or threatening to carry out the above actions as revenge for testimony or evidence already given is punishable by imprisonment of up to four years or corrective labour of up to two years.

26. In accordance with article 14 of the Convention, the Code of Criminal Procedure contains a series of articles governing the procedure for recognizing a person to be a victim and a civil plaintiff (articles 54 and 55), his or her right to launch a civil suit concurrent to criminal

proceedings (article 56 as amended by the Act of 1 February 1999) and the procedure for resolving a civil suit with a verdict and for conducting a civil suit (articles 312 and 313 as amended by the Act of 1 February 1999).

27. Article 60, part 2, of the Constitution provides that citizens are entitled in accordance with the law to seek compensation for both property damage and moral injury through the courts.

28. Under the Civil Code (of 7 December 1998), a citizen who suffers injury or other harm to his or her health shall be compensated for the loss of earnings or income which he or she received or demonstrably could have received and for additional expenses resulting from the damage to his or her health, including medical care, additional food, purchase of medicines, artificial limbs, hiring a carer, convalescent holidays, special transport and retraining for a different career, if it is established that the victim needs these types of assistance and care and is not entitled to receive them free of charge (article 954 of the Civil Code).

29. Under article 957 of the Civil Code, in the event of the death of a breadwinner, the following are entitled to compensation:

(a) Persons incapable of working who were dependent on the dead person or who on the date of his or her death were entitled to be maintained by him or her;

(b) A child of the deceased born posthumously;

(c) A parent, spouse or other member of the family, irrespective of ability to work, who does not work and is occupied with the care of dependent children, grandchildren, brothers and sisters of the deceased aged under 14, or aged over 14 but certified by the medical authorities to require constant care for health reasons;

(d) Dependents of the deceased who become unable to work in the five years following his or her death.

30. Independently of damage to property for which compensation is payable, compensation is envisaged for moral injury or physical or psychological suffering caused by actions violating the victim's personal non-property rights or infringing on other aspects of the non-material welfare of the victim, as well as in other cases covered by the legislation (articles 968 and 969 of the Civil Code).

31. In compliance with article 16 of the Convention, article 22 of the Criminal Code, dealing with the death penalty, has been expanded to include a part 3 under which the death penalty may be commuted to life imprisonment where the convicted person is pardoned.

32. The following articles have been added to the Criminal Code:

- Article 22-1 on life imprisonment, which is to be applied in the case of certain types of crime, but not to persons aged under 18 at the time of the crime, nor to women;

- Article 23-2 on short-term rigorous imprisonment, also establishing limitations in its application (text as amended by the Act of 31 December 1997).

33. The Corrective Labour Code governs the procedure for assigning convicted persons to corrective labour establishments and holding them there (chapter 3), the prison regime (chapters 4, 12 and 13), incentives and punishments applicable to prisoners (chapter 9), material and medical provision for prisoners (chapter 10), detention conditions for juvenile offenders in corrective labour colonies (chapter 14), execution of punishment in the form of short-term rigorous imprisonment (chapter 14-6 as amended by the Act of 31 December 1997) and release (chapter 18).

34. With a view to reform of the system of execution of punishments, a draft Code for the Execution of Criminal Penalties (adopted at its first reading in the Chamber of Representatives of the National Assembly) and an Execution of Criminal Penalties System Bill have been prepared.

35. The Code for the Execution of Criminal Penalties establishes the main principles and standards for policy in the field: humane treatment of offenders, strict observance of human rights and lawful interests, and encouragement of law-abiding behaviour on the part of convicted persons as a priority. Measures are also being taken to bring juvenile detention conditions into line with international standards. Juveniles are held separately from adult convicts, with improved living conditions and higher dietary standards, and provided with free standard clothing and shoes; each juvenile has his own bed. Labour is voluntary for convicted juvenile offenders. Three juvenile re-educative labour colonies have general schools.

36. A board of guardians was established for the first time in 1997 in Vitebsk re-educative labour colony No. 3, including representatives of the city's artistic elite and the Orthodox Church, prominent sportsmen and leaders of enterprises and organizations. The main goals of such boards of guardians in re-educative labour colonies are to assist the administration in organizing the corrective process and the inmates' general education and vocational training, resolving issues of the inmates' social welfare and building a healthy social and psychological atmosphere among the inmates.

37. The existing staff training system for corrective labour establishments includes:

- Study at the Faculty for training corrective labour establishment staff and special personnel of the Academy of the Ministry of Internal Affairs, founded in 1993;

- Annual training and retraining of re-education specialists and psychologists, including study of experience in other countries and psychological diagnosis and correction of convicted persons' behaviour.

38. Seminars/conferences are held with re-educators and psychologists in order to raise professional standards and exchange experience. The institutions are building collections of specialist literature and video cassettes, including translations of foreign material on juridical, psychological, pedagogical and other aspects of the execution of penalties.

39. Issues related to prohibition of the use of force or threats of force or acts of torture or bullying are included in the retraining and further training courses for judges and officials of the procurator's office, the courts and other judicial institutions in the system of justice. Responsibility for developing such programmes lies with the Belarus State University's Institute for the Retraining and Further Training of Judges and Officials of the Procurator's Office, the Courts and Other Institutions in the System of Justice.